IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9500 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GIRISHBHAI R PATEL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 9500 of 2002

MR AR THACKER for Petitioner No. 1

MR KOGJE, AGP with MR SHELAT, ADVOCATE GENERAL for Respondent No. 1

MR DG CHAUHAN for Respondent No. 2

MR MUNSHAW for Respondent No.3

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 01/05/2003

ORAL JUDGEMENT

#. The Gujarat State Land Development Corporation Limited (hereinafter referred to as "the Corporation" for short) is permitted to be joined as respondent no.3 vide a separate order, which is passed in Civil Application No.2746 of 2003. Mr.Munshaw is appearing for the newly added party, and, therefore, the name of Mr.Munshaw is to be shown as the learned advocate appearing for respondent No.3.

#. By filing this petition, the petitioner has challenged the order passed by respondent No.1 - State Government dated 9/11/2002, by which, the petitioner is removed from the post of Campus Director of respondent No.2 University. By the impugned order, the petitioner is removed from the aforesaid post on the ground that, at the time of getting the employment, the petitioner has given undertaking on 21/4/2001 wherein he has stated that he is neither under the Government employment nor under the employment of Semi Government institution and, subsequently, it has come to the notice of the Government that the petitioner was in the employment of the Corporation and that he continued in the said employment, as, his resignation was not accepted by the earlier employer, i.e. Corporation. According to the State, since the petitioner has not informed the State Government that his resignation was not accepted by his earlier employer and even though, he was aware of the said fact, yet, he failed to bring the said fact to the notice of the State and under the circumstances, he is required to be removed from the aforesaid post. The petitioner has challenged the aforesaid order on various grounds.

#. It is not in dispute that so far as the post of Campus Director of the Gujarat Agricultural University is concerned, the State is empowered to make such appointment and accordingly, the petitioner was appointed on the said post by order dated 21/4/2001. The petitioner continued on the said post for sometime. However, thereafter, by the impugned order dated 9/11/2002, he was removed from the said post on the ground narrated hereinabove.

#. On behalf of the petitioner, it is submitted by Mr.J.R.Nanavati that, before passing the impugned order, the petitioner was not given any hearing worth the name by the State Government, and, therefore, the impugned order is required to be set aside since it is in violation of the principles of natural justice. Mr.Nanavati further submitted that, at the relevant time,

the petitioner had already resigned from his earlier employment. He submitted that, as per the Regulations of the Gujarat State Land Development Corporation Limited, wherein the petitioner was serving earlier, there is no provision for acceptance of the resignation. For that purpose, the petitioner has placed on record the Service Rules of the Corporation. Regulation 24 of the said Rules reads as under.:

"24. DISCHARGE OR DETERMINATION OF SERVICE AFTER CONFIRMATION :

After confirmation, an employee may be discharged from the service of the Corporation by the appointing authority without assigning any reasons or he may leave the service of the Corporation in either case after one month's notice in writing in that behalf or by payment of one month's emoluments in lieu of such notice."

On behalf of the petitioner, it is submitted that an employee can leave the services of the Corporation by giving one month's notice in writing in that behalf or by paying one month's emoluments in lieu of such notice. It is the say of the petitioner that he has tendered his resignation in the month of July 2001, which is at page 22 in the compilation and, along with the said letter of resignation, he has also deposited the notice pay of Rs.10398/-. It is not in dispute that the said amount was accepted by the Corporation and, prima facie, it appears that, that amount is not even returned to the petitioner.

In view of the above factual background, it is submitted by Mr.Nanavati that once the petitioner has tendered his resignation and has paid one month's salary as per the Rules and when the Corporation has accepted the said amount, the petitioner was justified in stating before the State authority, at the time of getting the new employment as Campus Director, that he is not in service of the State or in the service of any other Semi-Government institution, as, according to him, on the date on which he got the employment of the State Government, he was not in such service.

#. Mr.Munshaw for the Corporation states that, it is not in dispute that the petitioner tendered his resignation, and that he paid one month's salary in lieu of notice and that such amount was accepted by the Corporation, but, the Corporation has never accepted the resignation, as, no intimation was given to the petitioner to the effect

that the resignation of the petitioner is accepted, and it should be presumed that the petitioner continued with the employment of the Corporation. He submitted that, subsequently, a departmental inquiry was also initiated against the petitioner by the Corporation for the alleged financial irregularities.

On behalf of the petitioner, it is also argued that the inquiry is initiated against the petitioner after a period of about 8 months from the date of so-called resignation and the Corporation has no right to initiate such inquiry after the period of about 8 months, as, at the time of initiation of such inquiry, the petitioner was not in the employment of the Corporation and that the petitioner was accordingly not bound even to participate in such departmental inquiry initiated by the Corporation, as, according to him, he is not in the employment of the Corporation.

#. It is submitted by Mr.Munshaw that by letter dated 12.2.2002, the Corporation has informed the petitioner that his resignation is not accepted. However, it is required to be noted that even such letter is issued to the petitioner after about 10 months from the date of tendering his resignation letter to the Corporation.

#. In view of the aforesaid factual aspect, it is submitted by Mr.Nanavati for the petitioner that since the Corporation has already accepted the amount deposited by the petitioner at the time of giving resignation letter and in view of the fact that, as per Regulation 24, on giving one month's notice, the petitioner is entitled to get himself relieved from the employment of the Corporation, the subsequent developments, of issuing chargesheet by the Corporation etc., are irrelevant and that there is no provision under the Regulations of the Corporation regarding intimating an employee about the acceptance of the resignation, upon which heavy reliance is placed. Mr.Shelat, learned Advocate General, who is appearing for the State Government, has conceded that, no hearing was given to the petitioner before passing the impugned order.

#. Whether the petitioner has joined the service as Campus Director after giving a valid resignation or, whether he still continued in the employment of the Corporation at the time of joining his duties as Campus Director, are the questions, which, in my view, are required to be decided by the State Government after giving the petitioner an opportunity of being heard. It cannot be said that the petitioner has no explanation

worth the name to offer to the State Government, by pointing out that, at the time of getting the employment with the State (on the post in question), he was not in any other service of the State or Semi-Government institution. In my view, before passing the impugned order, which is, definitely, having civil consequences, the petitioner was required to be heard by the State Government and, admittedly, no such hearing was given to the petitioner. It is not suggested that the Government is required to initiate full-fledged departmental inquiry, but, at least, the principles of natural justice were required to be followed and if an opportunity of hearing was given to the petitioner, the petitioner could have pointed out, whether the allegation against him is correct or not. In my view, therefore, the petition is required to be allowed on this short ground, as, the impugned order is passed without giving hearing to the petitioner in this connection.

#. It is clarified that this Court has not expressed any opinion on the point, whether the Corporation was required to pass separate order accepting the resignation of the petitioner or, whether the petitioner can be said to be continued in the employment of the Corporation. All these questions will be required to be decided by the State while passing a fresh order after hearing the petitioner in this behalf. Without expressing any opinion on all these questions, I am setting aside the impugned order only on the short ground, as indicated above. It will be open for the State to pass appropriate order, in case the State so desires, after following the principles of natural justice, namely, giving an opportunity of hearing to the petitioner. Mr.Nanavati, after taking instructions from his client, states that the petitioner will not claim any benefit of salary for the intervening period, i.e., from the date of the impugned order till he is actually reinstated on his original post. Under these circumstances, the following order is passed.:

The petition is allowed. The impugned order at Annexure-B is quashed and set aside. The respondent No.1 is directed to reinstate the petitioner to his original post of Campus Director of Agricultural University at Anand forthwith, latest by 10/5/2003. It is clarified that the petitioner will not be entitled to any monetary benefit for the intervening period. After reinstatement, the petitioner will be entitled to draw all emoluments, which he was getting before the impugned order was passed. Rule is made absolute accordingly with no order as to costs.

(P.B.Majmudar,J)

(pathan)